

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

DOUGLAS J. SEVIN,
Debtor.

Chapter 7 case
98-11674

Appearances: Norman Cohen, Esq.
Cohen & Rice
Rutland, VT
Attorney for Creditor

DECISION AND ORDER ALLOWING CLAIM AS TIMELY

Whereas creditor Great Jones Lumber Corporation (hereafter “the creditor”) filed a motion on October 17, 2001 seeking to have its claim allowed as timely even though it did not file a proof of claim until after the claims bar date, on the ground that it had timely filed an informal proof of claim; and

Whereas this Court has reviewed the memorandum of law filed by the creditor and conducted its own research of this issue; and

Whereas neither the debtor, the case trustee nor the U.S. Trustee has filed an objection to the creditor’s motion;

This Court makes the following findings:

1. The time limit set forth in Federal Rules of Bankruptcy Procedure 3002(c) for the filing of proofs of claim is the equivalent of a statute of limitations. *See In re Roberts*, 98 B.R. 664, 665-66 (Bankr. D. Vt. 1989).
2. The concept of an informal proof of claim creates an equitable basis for this Court to allow as timely a proof of claim that was filed after the claims bar date if, prior to the claims bar date, the creditor has filed a document which sets forth an explicit demand showing
 - (i) the nature of the claim,
 - (ii) the amount of the claim, and
 - (iii) evidence of an intent to hold the debtor liable.*See Matter of Nikoloutsos*, 199 F.3d 233 (5th Cir. 2000); *In re Houbigant*, 190 B.R. 185 (Bankr. S.D.N.Y. 1995); *In re Rainbow Trust*, 179 B.R. 51 (Bankr. D. Vt. 1995); *In re Drexel Burnham Lambert Group, Inc.* 129 B.R. 22 (Bankr. S.D.N.Y. 1991).
3. A determination regarding the existence of an informal proof of claim turns upon the specific facts and circumstances of each case and requires a clear showing of the criteria set forth above, as well as a showing that such a determination is in the interest of justice.

4. The creditor's filing of three joint motions for extensions of time to object to the dischargeability of its debt and to the debtor's discharge, each specifically alleging that the creditor held a judgment for a particular amount which the creditor intended to pursue against the debtor if relief were granted, as well as its filing of a complaint objecting to discharge, when taken together, provided sufficient and timely notice to the debtor, the case trustee and the Court to constitute an informal proof of claim.
5. The creditor's zealous and critical role both in the filing of this case and the procurement of assets for creditors, and the lack of objection by any party to the allowance of its claim, as well as the fact that the actual proof of claim was filed within 11 days of the claims bar date, though not determinative, are important factors in the consideration of whether allowance of this claim would serve the interests of justice.
6. The creditor's actual proof of claim, filed on July 17, 2000, may be treated as an amendment of its previously filed informal proof of claim, which was filed prior to the claims bar date. *See In re Scott*, 227 B.R. 832 (Bankr. S.D. Ind. 1998); *In re Leis*, 198 B.R. 257 (Bankr. N.D. Ohio 1996).

IT IS THEREFORE ORDERED that the creditor's proof of claim dated July 17, 2000 is deemed timely filed and that shall be so treated by the case trustee in the administration of this estate.

November 27, 2001
Rutland, Vermont



Colleen A. Brown
U.S. Bankruptcy Judge